

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

FEDERAL DEPOSIT INSURANCE  
CORPORATION, as Receiver of Heritage  
Community Bank,

Plaintiff,

v.

JOHN M. SAPHIR; PATRICK G.  
FANNING; STEPHEN L. FAYDASH;  
WILLIAM E. HETLER; THOMAS JELINEK;  
LORI A. MOSELEY; STEPHEN  
ANTHONY; JERRY C. BRUCER; JAMES  
K. CHAMPION; ANDREW B. NATHAN;  
and MARY C. MILLS,

Defendants.

Case No. 10-cv-07009

Judge Rebecca R. Pallmeyer

Magistrate Judge Arlander Keys

**JOINT MOTION TO DISMISS COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants James K. Champion and Stephen Anthony hereby move this Court to dismiss with prejudice the Complaint filed against them by the Federal Deposit Insurance Corporation ("FDIC"), acting as Receiver of Heritage Community Bank (the "Bank"), on the grounds that it fails to state a claim against them upon which relief can be granted. The FDIC's Complaint against Defendants Champion and Anthony, who each served as an outside director of the Bank, should be dismissed for the following reasons:

1. As to Counts II and III, because the FDIC is barred from bringing negligence or breach of fiduciary duty claims against the Bank's directors under the Illinois Banking Act, 205 ILCS § 5/39, and the Bank's by-laws.

2. As to all counts, because the allegations of the Complaint treat the Bank's seven directors as a unit and fail to distinguish among the Bank's outside directors and inside directors, much less assert any allegations specifically against Defendants Champion or Anthony. Thus, the Complaint does not give Defendants Champion and Anthony fair notice of the claims against them as required by Federal Rule of Civil Procedure 8.
3. As to all counts, because the allegations of the Complaint do not rebut the presumption of the business judgment rule that Defendants Champion and Anthony acted in good faith and with due care as directors and fail to plead claims for negligence, gross negligence, or breach of fiduciary duty.
4. As to all counts, because the Complaint fails to allege that the decisions of Defendants Champion and Anthony were the proximate cause of any injury to the Bank.

Defendants Champion and Anthony submit the accompanying memorandum of law in further support of their motion to dismiss. In addition, as set forth in the accompanying memorandum of law, Defendants Champion and Anthony join and incorporate by reference the relevant portions of Defendant John M. Saphir's Motion to Dismiss the FDIC's Complaint and Memorandum in Support (Docket Nos. 61 & 69): (a) the Factual Background section; (b) Section I of the Argument; (c) Section II of the Argument; and (d) Section III of the Argument.

WHEREFORE, Defendants, James K. Champion and Stephen Anthony, respectfully request that the court grant their motion to dismiss, enter an order

dismissing the FDIC's Complaint with prejudice, and grant such other relief as the court deems just and appropriate.

Dated: January 24, 2011

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Sigal P. Mandelker, do hereby certify that I have caused a true and correct copy of the foregoing to be served to the following attorneys, today January 24, 2011, by operation of the Court's CM/ECF electronic filing system:

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